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INFO RUEHBU/AMEMBASSY BUENOS AIRES PRIORITY 0010
RUEHLGB/AMEMBASSY KIGALI PRIORITY 0957
RUEHNR/AMEMBASSY NAIROBI PRIORITY 0642
RUEHTC/AMEMBASSY THE HAGUE PRIORITY 1064
RUCNDT/USMISSION USUN NEW YORK PRIORITY

C O N F I D E N T I A L DAR ES SALAAM 000735

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SWCI FOR BDOHERTY AND MICHAEL MORIN; IO/UNP FOR REBECCA
GOLDENBERG; AF/E FOR BARBARA YODER

E.O. 12958: DECL: 05/17/2017
TAGS: [PREL](#) [UNGA](#) [ICTR](#) [TZ](#)
SUBJECT: SHOWDOWN AT THE ICTR CORRAL: BENCH SPLIT REGARDING
TRIBUNAL'S PRESIDENTIAL ELECTION

Classified By: Acting Deputy Chief of Mission Tulinabo Mushingi for reasons 1.4(b) and (d).

¶1. (SBU) SUMMARY: On May 21, the judges of the International Criminal Tribunal for Rwanda (ICTR, or the Tribunal) are scheduled to elect a President as the current term ends this month. President Erik Mose wishes to serve a third term and proposals to amend the Rules to allow this are tabled for the May 21 meeting. Judge Dennis Byron has announced his candidacy, opposes the Rules change on principle, and is one of four or five judges prepared to resign should the change be adopted and Mose re-elected. Resignation of any judge could affect the Tribunal's completion strategy. END SUMMARY.

¶2. (SBU) On Monday, May 21, the judges of the International Criminal Tribunal for Rwanda (ICTR, or the Tribunal) are scheduled to meet in plenary session where the permanent judges will "elect a president from amongst their number," per the Tribunal's Statute. The judge-made Rules of Procedure and Evidence (Rules) of the ICTR, limit the Tribunal's president to two two-year terms. President Erik Mose's second term concludes this month; however, Mose plans to run for a third term which would require the judges to amend the Tribunal's Rules.

¶3. (C) Judge Charles Michael Dennis Byron of Saint Kitts and Nevis has expressed in writing an interest in serving as President, according to Barbara Mulvaney, Senior Trial Attorney, and Tim Gallimore (please protect), Spokesperson for the Prosecutor. Byron opposes amending the Rules to allow Mose to serve a third term, Gallimore told Poloff on May 16, and a group of four or five judges, including Judge Byron, are prepared to resign on principle should the Rules be amended and Mose re-elected. Gallimore declined to identify the other judges who are prepared to resign.

¶4. (C) Susan Lamb, Chef du Cabinet in the President's office, confirmed there is another candidate and noted President Mose is "in a bit of a dilemma" regarding the situation as usually the election would be discreet and kept between the judges. Two proposals to amend the Rules to allow a third term as President have been tabled, according to Lamb, who said the proposals differ in terms of detail but assured Poloff the differences are aesthetic only. Lamb said the judges were invited to consolidate the two proposals but had declined to do so. Lamb confirmed a president would be elected May 21 regardless of the outcome regarding the proposed changes to the Rules, and expects discussion to

involve issues of judicial continuity.

¶5. (C) In response to Poloff asking if there was a possible compromise candidate, Gallimore said there was a long-shot candidate but that she had come from the Hague and brings a lot of controversy. This description fits Judge Ines Monica Weinberg de Roca of Argentina who served as a permanent judge of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Hague from June 2003 to October 2005.

¶6. (SBU) Also on the agenda for May 21 is a proposal to change Rule 15bisD to allow a chamber to continue with two judges in the event a judge dies or is unable to continue to serve due to illness. Lamb believes the judges are unanimous regarding the need to address this issue, but not unanimous as to how to address it, and emphasized the issue is tabled for discussion only.

¶7. (U) NOTE: The Rules state the President shall be elected by majority of the votes of the judges (9 of 16) and that if no judge obtains a majority, the second ballot will be of the two who obtained the most votes. If the second ballot results in a tie, the judge with the longest tenure is declared elected. An amendment to the Rules requires the vote of at least ten judges. The Rules do not provide for a secret ballot. END NOTE.

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¶8. (C) COMMENT: The resignation of even one judge could impact a number of trials as most judges serve on more than one bench simultaneously. Should several judges resign, the work of the entire Tribunal could come to a halt. The President can have a great affect on the work of the Tribunal as the President appoints the Appeals bench (which is due to be expanded, possibly at the plenary session May 21) and the referral bench (which will decide the issue of referring

cases to other jurisdictions, including Rwanda). Both Gallimore and Mulvaney indicated to Poloff that the division of the bench regarding a third presidential term may be along racial lines, with black judges opposing the proposal. END COMMENT
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